

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

EMG TECHNOLOGY, LLC,

Plaintiff,

v.

APPLE, INC.,
AMERICAN AIRLINES, INC.,
BLOOMBERG, L.P.,
CONTINENTAL AIRLINES, INC.,
UNITED PARCEL SERVICE, INC.,

Defendants.

CASE NO. 08-CV-00447-LED

JURY TRIAL DEMANDED

**PLAINTIFF AND COUNTERDEFENDANT EMG TECHNOLOGY LLC'S
ANSWER TO COUNTERCLAIM OF UNITED PARCEL SERVICE, INC.**

Pursuant to Fed . R. Civ. P. 8(b), EMG Technology, LLC ("EMG") hereby responds to the Counterclaim of United Parcel Service, Inc. ("UPS") as follows. Unless specifically admitted, EMG generally denies all allegations in the Counterclaim. EMG expressly denies that UPS is entitled to any relief whatsoever in connection with its Counterclaim, including, but not limited to, all relief requested by UPS in its Prayer for Relief.

NATURE AND BASIS OF ACTION

1. EMG admits the allegations contained in Paragraph 1.

PARTIES, JURISDICTION AND VENUE

2. EMG admits the allegations contained in Paragraph 2.
3. EMG admits the allegations contained in Paragraph 3.
4. EMG admits the allegations contained in Paragraph 4.
5. EMG admits the allegations contained in Paragraph 5.

COUNT I

DECLARATION OF NON-INFRINGEMENT OF THE '196 AND '845 PATENTS

6. EMG incorporates by reference its responses to Paragraphs 1-5 above as though fully set forth herein.

7. EMG admits that an actual controversy currently exists between EMG and UPS regarding the infringement of the '196 and '845 patents. Except as expressly admitted, EMG denies the remaining allegations contained in Paragraph 7.

8. EMG denies the allegations contained in Paragraph 8.

COUNT I

DECLARATION OF INVALIDITY OF THE '196 AND '845 PATENTS

9. EMG incorporates by reference its responses to Paragraphs 1-8 above as though fully set forth herein.

10. EMG admits that an actual controversy currently exists between EMG and UPS regarding the validity of the '196 and '845 patents. Except as expressly admitted, EMG denies the remaining allegations contained in Paragraph 10.

11. EMG denies the allegations contained in Paragraph 11.

PRAYER FOR RELIEF

WHEREFORE, EMG prays that this Court enter judgment against UPS as follows:

- (a) Dismissing UPS's Counterclaim with prejudice and ordering that UPS is entitled to no recovery on the Counterclaim;
- (b) Ordering that this is an exceptional case pursuant to 35 U.S.C. § 285, and awarding EMG its attorney fees and full costs of suit; and
- (c) Awarding EMG such other and further relief as this Court deems just and appropriate.

DATED: April 17, 2009

Respectfully Submitted,

OF COUNSEL:

Jeffer, Mangels, Butler and Marmaro, LLP

Stanley M. Gibson
(Cal. Bar No. 162329)
smg@jmbm.com

Joshua S. Hodas, Ph.D.
(Cal. Bar No. 250812)
jsh@jmbm.com

1900 Avenue of the Stars, Seventh Floor
Los Angeles, CA 90067
Telephone: (310) 203-8080
Facsimile: (310) 203-0567

Manatt, Phelps & Phillips, LLP

Robert D. Becker
(Cal. Bar No. 160648)
rbecker@manatt.com

Shawn G. Hansen
(Cal. Bar No. 197033)
shansen@manatt.com

1001 Page Mill Road, Building 2
Palo Alto, CA 94304
Telephone: (650) 812-1300
Facsimile: (650) 213-0260

By: */s/ Charles Ainsworth*

Charles Ainsworth
State Bar No. 00783521
Robert Christopher Bunt
State Bar No. 00787165
PARKER, BUNT & AINSWORTH, P.C.
100 E. Ferguson, Suite 1114
Tyler, TX 75702
903/531-3535
903/533-9687
E-mail: *charley@pbatyler.com*
E-mail: *rcbunt@pbatyler.com*

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record, who are deemed to have consented to electronic service are being served this 17th day of April, 2009, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Charles Ainsworth
Charles Ainsworth